

## Understated Persuasion

Christopher Cottle draws on his experience as a state appellate court justice to bring sometimes contentious litigants to successful settlements.

By Paul Jones

Daily Journal Staff Writer

Calm and soft spoken, retired 6th District Court of Appeal Justice-turned mediator Christopher C. Cottle knows how to exert a patient control over attorneys and clients during often frustrating negotiations. He has plied a steady temperament and skills from an extensive legal career to urge businesses and families to avoid unnecessary trials and spare resource-strapped courts the extra work.

Cottle works independently from his Santa Cruz office as well as for ADR Services Inc. and the American Arbitration Association.

"He is low key in his approach," said Charles Keller, a partner with Fenton & Keller PC in Monterey.

Keller said that, while some mediators tend to "exaggerate" and use "hyperbole" while trying to break an impasse, Cottle speaks frankly and respectfully. He said the former justice quietly moves "the parties in the direction which will lead to resolving the case."

"He does it in a way in which it's not as if he's dictating to either side," Keller said.

Monterey sole practitioner Joel Franklin said Cottle's appellate court experience has proven valuable in working out thorny cases.

"As an appellate justice, he understands not only what the parties are fighting about, but also the long-term implications of a case, and how it may be resolved down the line," Franklin said. "He can look at a case from 30,000 feet and see where the problem may be long-term, which is very helpful in getting lawyers and clients grounded in solutions."

Cottle graduated from UC Hastings College of the Law and pursued private legal work in San Jose. He then went to work for the Santa Cruz district attorney's office in 1968 under Peter Chang Jr. around the time several high-profile crimes earned Santa Cruz the nickname "Murder Capital of the World."

"[People] said if you want experience, join a district attorney or public defender office," Cottle said. "I was young, inexperienced, but I was really

eager to learn ... Within two years I was trying murder cases ... [including] several mass murder cases."

While he spent most of his lawyer career prosecuting cases, Cottle said he also gained experience doing defense work during his few years of private practice. That work, he said, gave him perspective on both sides of arguing a case.

"I represented a college professor who was charged with battery of a police officer [during anti-war protests in Oakland]," Cottle said. "[The judge] was very good to me ... he gave him a fine, and not even a jail sentence. I was impressed with that. It was my first clear understanding that judges do have some discretion."

Several years later, Cottle had a chance to apply to try his hand at judging. After taking over as district attorney following Chang's departure, he submitted his name for a judgeship. Cottle said his time as a district attorney taught him to supply a more personal touch to his work, and he applied that element as a superior court jurist after being appointed by Gov. Jerry Brown in 1977.

"The judges in Santa Cruz were good judges ... I admired them," Cottle said. "[But] one of the things I remember as a district attorney, it always bothered me when judges wouldn't really address a defendant and say how they felt ... It wasn't personal enough. I took it upon myself to be a more personal judge ... concerned about everyone in a courtroom, meaning everyone from the defendant to the victim."

Cottle continued to gain experience, serving as an associate justice from 1988 to 1993 before becoming the 6th District's presiding justice, a position he held until his 2001 retirement. One of his major cases involved a woman who had conspired with her lover to murder her husband. Cottle had to decide whether unauthorized tape recordings made by the murdered husband could be used as evidence. In another case, Cottle threw out an arson case after determining an investigator had fabricated evidence.

Cottle said his time on the appellate bench gave him insight into how cases decided in lower courts might later play out.



Paul Jones / Daily Journal

### Christopher C. Cottle

ADR Services Inc. and American Arbitration Association  
Santa Cruz

**Areas of specialty:** family law, commercial disputes, contracts, employment

"Some of my work [as a mediator] is actually working with attorneys, consulting with them regarding appeals, so it really works to that situation," Cottle said.

Franklin, the Monterey sole practitioner, said Cottle helped mediate a case involving a family in which millions of dollars were on the line. He said the case could have dragged on for years.

"This was a couple in their seventies," he said.

But Cottle helped explain the consequences of the matter to the attorneys and clients, resolving the case much faster, Franklin said.

Cottle said he continues to look at cases he's mediating from the perspective of a judge.

"You're looking at the facts, the law, issues involving instruction," he said. "Most of my mediations, particularly now, are ones where I'm helping the attorneys evaluate the case."

Cottle said he prepares by thoroughly reading through briefs, listing the risks of litigation to the various parties, and trying to determine which party has "power" — money, time, or a better case. Finally, he tries to identify which, if any, facts are in dispute. But he stressed that his experience managing people is key, as many cases come down to a battle of wills.

"If you're not patient, if you're not a good listener, if you're not empathetic and understanding, you can forget being a mediator," he said. "I have little techniques, where I try to get people to back up and re-approach the case from a different perspective."

Cottle said he expects attorneys entering into mediation to be mentally prepared for compromise. He also said lawyers shouldn't enter a conference without having worked hard to develop a sense of how their case would play out.

"They need to think through the way they're going to try the case," he said. "[They should be] able to focus on what might be the real strengths and weaknesses of the case."

Cottle said he intends to retire someday but has no immediate plans. He said his mediation and arbitration work isn't simply to pay the bills but rather it's another stage in his career of providing legal service to the community.

"I feel like I'm using honed skills that I've had to work on for a long time," he said. "When we settle a case, I think about what I've done for the parties ... for the attorneys ... and I also think about my friends the judges back at the courts. I can now spare them one awful case."

*Here are some lawyers who have used Cottle's mediation and arbitration services:*

Ralph W. Boroff, Boroff, Jensen, Klein & Smith, Santa Cruz; Matthew A. Crosby, Crosby & Farnum, San Jose; Joel Franklin, Monterey; Ronald S. Granberg, Salinas; Charles R. Keller, Fenton & Keller, Monterey; John H. McSpadden, Capitola; Timothy J. Morgan, Santa Cruz; Edward W. Newman, Newman & Marcus, Capitola; Christopher E. Panetta, Fenton & Keller, Monterey; Valerie M. Roach, Watsonville; Anne Secker, Noland, Hamerly, Etienne & Hoss, Salinas; Timothy Walsh, Walsh & Roach LLP, Watsonville; Michelle A. Welsh, Pacific Grove; Ashley M. Winn, Aptos.